



CITY OF HAYWARD AGENDA REPORT

Planning Commission
Meeting Date 07/29/99
Agenda Item 1

TO: PLANNING COMMISSION

FROM: Cathy Woodbury, Principal Planner/Landscape Architect

SUBJECT: Appeal Planning Director's Approval Of Extension Of Time For Site Plan Review 99-130-05 – Flynn, Craig & Grant, Architects (Applicants), City Of Hayward Redevelopment Agency & Multiple Owners (Owners). *The Site Is Located On Mission Boulevard Between "A" And "B" Streets.*

RECOMMENDATION:

It is recommended that the Planning Commission deny the appeal and uphold the one-year time extension for the project.

DISCUSSION:

Background

On July 7, 1998 the City Council approved Site Plan Review No. 98-130-02, a request to construct a retail center on Mission Boulevard and "A" Street, which would expire in one year if a building permit application were not submitted to the City. Conditions of project approval require that an environmental assessment be completed for the entire site and that contamination issues related to the proposal be resolved prior to approval of improvement plans and building permits. Due to the extensive testing required, property access issues with the owner, and requests from the Regional Water Quality Control Board for additional borings, the project has been delayed and a building permit application has not been submitted. Therefore, on June 11, 1999, the applicant requested an extension of time in order to obtain the necessary environmental clearance (Attachment "B").

Pursuant to the City's *Zoning Ordinance*, a maximum of two one-year time extensions may be approved by the Planning Director or, on appeal, by the Planning Commission or City Council. In making a decision on approval of an extension, consideration must be given to the cause for delay in submitting a building permit application and whether the proposal is in conformance with existing development regulations. The Planning Director determined that an extension is appropriate in that (a) the cause for delay was based to great extent on circumstances relating to remediation issues outside the control of the developer and (b) there have been no changes in development regulations in the downtown area that would have a bearing on the project.

The Planning Director approved a one-year time extension on June 28, 1999. The decision was appealed by a neighboring property owner as noted in the correspondence included as Attachment "C." The appellant claims that the applicant had sufficient time to complete the site plan, that further environmental review should be done as a result of the contamination identified, and that the developer delayed performing the required testing.

Prior to the preparation of the Initial Study and Mitigated Negative Declaration (Attachment "D"), a preliminary investigation was made of the subsurface conditions at areas of potential environmental concern within the project site. Volatile organic compounds were identified in soil and groundwater samples in the vicinity of the former dry cleaner located at 22525 Watkins Street. A possible underground storage tank and low concentrations of petroleum hydrocarbons (gasoline) were detected in groundwater in a second area near a former service station located at 789 "A" Street. Another possible underground storage tank was identified in the area south of the auto repair shops mid-block on "A" Street between Watkins and Mission Boulevard. However, neither volatile organic compounds nor petroleum hydrocarbons were detected in the groundwater at that location.

It was determined that additional environmental concerns may exist on the southwest portion of the site where an auto repair shop, dry cleaners, the Greyhound bus station and former taxicab facility are located. These areas could not be investigated at the time due to property access issues with the owner.

Construction and operation of the proposed project does not increase risk due to hazardous materials. However, Mitigation Measures 9.a. and b. require completion of an environmental assessment and a resolution to contamination issues related to the proposal prior to approval of improvement plans and building permits. All areas of environmental concern are to be addressed in the form of a remedial action work plan submitted to and approved by the Alameda County Health Care Agency, California Regional Water Quality Control Board (CRWQCB) and the City.

In May 1998, prior to approval of the site plan, the applicant met with representatives of CRWQCB to outline the environmental issues. In June, they held a second meeting to discuss the results of the testing completed at which time the applicant agreed to perform additional tests on the site. Rights of access to the remaining properties were not granted until September or later and the extensive testing resumed and continued during the ensuing months.

In February 1999, a summary report was submitted to CRWQCB and the applicant requested a final agreement on the remedial action required. Subsequently, the Board requested three additional rounds of borings and testing. On May 12, 1999, the results of the last boring were transmitted to the Board and the applicant requested a calendar date for the CRWQCB hearing for the Prospective Purchaser Agreement. The agreement outlines the remediation and monitoring required of the applicant such as, soils cleanup, installation of monitoring wells and construction vapor barriers. On July 21, 1999, the Board approved the Prospective Purchaser

Agreement and the construction documents may now be completed for building permit submittal.

The appellant claims an environmental impact report should be prepared before an extension is granted which addresses new and significant facts. The appellant refers in his letter to a report by Treadwell and Rollo, which addresses geotechnical issues for the project. Results of the report were included in the Initial Study and incorporated as Mitigation Measure 3. The report stated that there is no evidence of a trace of the Hayward Fault between Mission Boulevard and Watkins Street and concluded that it is unlikely that a fault trace passes through the proposed Lucky store footprint. Further, considering the low probability of the fault passing through the building footprint and the difficulty trenching across Watkins Street while it remains a public thoroughfare, the report recommended the trench study be performed after the street is abandoned. Condition of Approval 3.f. requires that the trench study be performed, and that site improvements are designed accordingly, prior to the issuance of a building permit. Staff disagrees that further environmental review is required or appropriate in conjunction with the request for an extension of time.

Public Notice

On June 28, 1999, a notice was mailed to property owners and tenants within 300 feet of the project boundaries advising them that the Planning Director had approved a one-year time extension for the project. In addition to the appellant's request for information on the project delay, there were two telephone inquiries as to when construction of the project was anticipated to start.

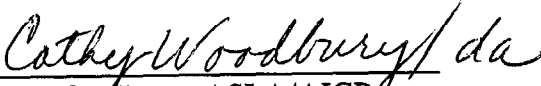
On July 18, 1999, a public hearing notice was published in the "Daily Review". The notice was mailed to surrounding property owners and residents on July 16, 1999, advising them that the time extension had been appealed. There has been no further response from the public.

Conclusion

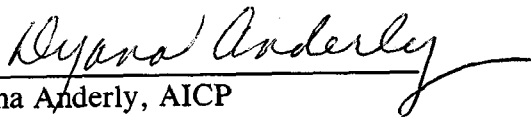
When the site plan was approved, the project was found to be consistent with the intent and policies of the City's adopted plans for downtown redevelopment. The goals, policies and land use regulations have not changed since approval of the project therefore, the site plan application remains consistent. Because there are no inconsistencies between the project and City policies, and in consideration of the reasons for the delay of the project, the Planning Commission's action is final unless appealed.

Staff recommends that the Planning Commission deny the appeal and uphold the one-year time extension for the project.

Prepared by:

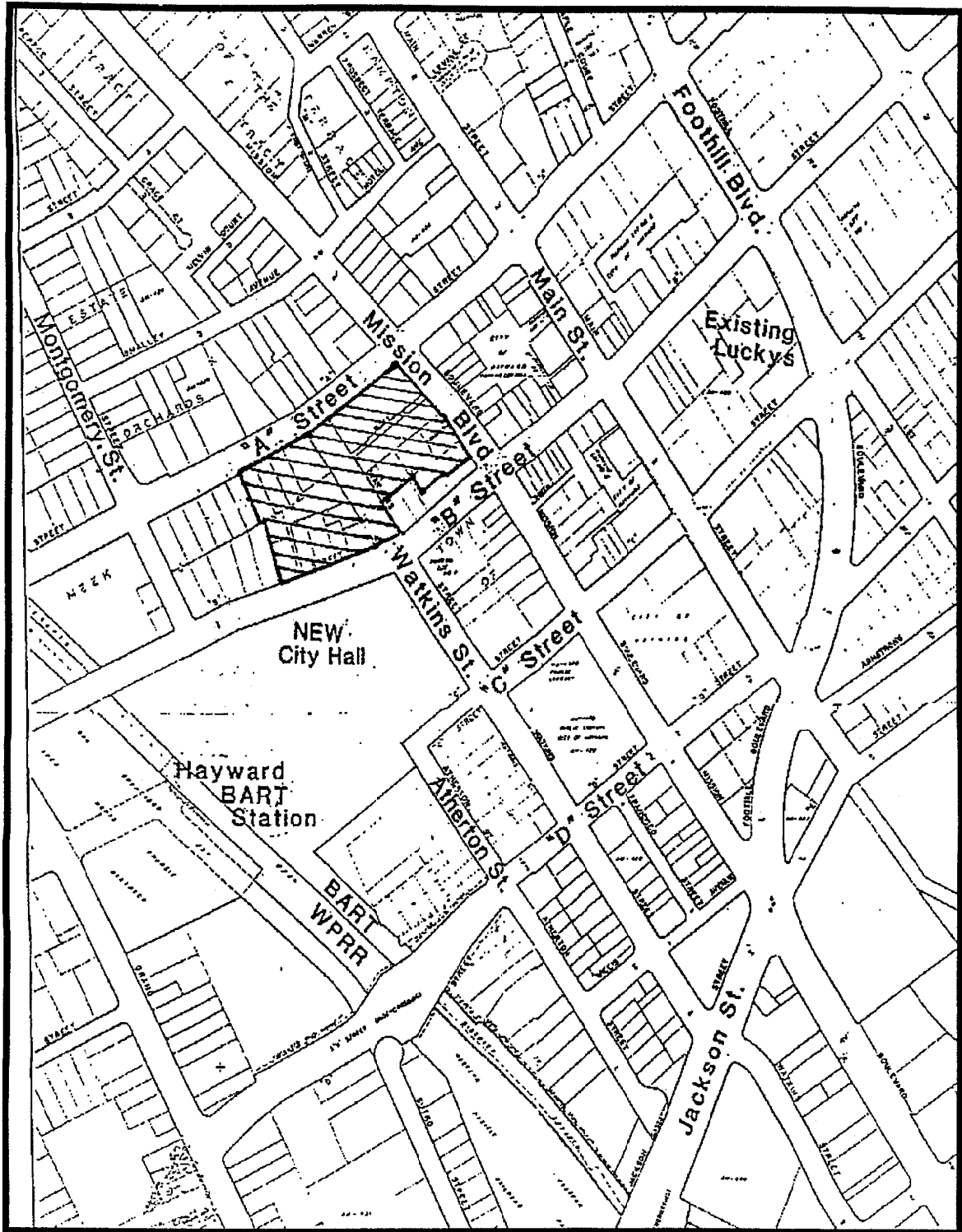

Cathy Woodbury, ASLA/AICP
Principal Planner/Landscape Architect

Recommended by:


Dyana Anderly, AICP
Planning Manager

Attachments:

- A - Area Map
- B - Request for Time Extension (letter from Lynn Craig)
- C - Appeal (letter from Ray Baker)



AREA MAP

SPR 99-130-05

Flynn, Craig & Grant, Architects (Applicant)

Redevelopment Agency & multiple owners (Owners)

RECEIVED

JUN 11 1999

DEVELOPMENT REVIEW SERVICES

FLYNN
CRAIG +
GRANT
ARCHITECTS

June 11, 1999

Dyana Anderly
Development Review Services Administrator
City of Hayward
777 "B" Street
Hayward, CA 94541

Regarding: Hayward Lucky-Sav-on #110-398
NWC Mission & "A" Street

Dear Dyana:

The July 7, 1998 Conditions of Approval for the Lucky-Sav-on project state "The site plan shall become void one year after approval of the City Council unless, prior to that time, a building permit application has been accepted for processing by the Building Official or an extension has been approved."

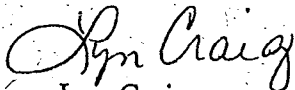
The Regional Water Quality Review Board's approval of the environmental mitigation measures created a delay in the project schedule; therefore we are requesting a time extension. We intend to submit the plans to the Building Department prior to July 31, 1999.

Your continued assistance is appreciated. Please let me know if any additional information is required to process the extension.

A check for \$25.00 payable to the City of Hayward is attached for the processing fee.

Sincerely,

FLYNN, CRAIG AND GRANT ARCHITECTS



Lyn Craig
Entitlement Consultant

Cc: Kevin Nolan

301 Hartz Avenue
Suite 213
Danville
California 94526
925-820-9123
925-820-5858 Fax

ATTACHMENT B

LAW OFFICE OF
RAYMOND N. BAKER
770 A STREET: P.O. BOX 12
HAYWARD, CALIFORNIA 94543
(510) 537-2100 FAX 537-4406

July 12, 1999

RECEIVED
JUL 12 1999
PLANNING DIVISION

City of Hayward Planning Director
City Hall
777 "B" Street
Hayward, CA 94541

RE: Request for extension of time for Site Plan Review
by Flynn, Craig & Grant, Architects

Dear Sirs:

The undersigned property owners and occupants of offices adjacent to the proposed American Stores development hereby appeal from the decision of the Planning Director to approve a one-year extension of time for site plan review for the following reasons:

1. American Stores have had ample time to complete the site plan for the proposed development.

2. Before any extension be granted an Environmental Impact Report be done to consider new and significant environmental facts such as the report made by Treadwill and Rollo that at least three feet of soil beneath the building pads be excavated and recompact. Because such an excavation of soils is to be done in an area deemed to be a source of hazardous chemical compounds, an EIR should be done to determine the most reasonable action to be taken to ensure the public safety. Furthermore, the lapse of time since the City first announced its intention to consider this project has already had a deleterious effect on several of the business properties to be acquired by the City, and the granting of this request for an additional one year's time will cause further deterioration of the businesses affected.

3. The reason give by American Stores that it is the California Regional Water Quality Control Board that caused a delay in the project schedule is unsupported by any facts; in truth it is the delays by the developers in performing soil

ATTACHMENT C

City of Hayward Planning Director
American Stores Development
July 12, 1999
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and underground water testing which has caused any delay, and that fact has nothing at all to do with the State Water Quality Control Board's actions. The State Board as of the date of this letter has not approved the developers plans.

For all of the above reasons, American Stores's request for an extension of time must be denied; and if granted, only on the condition that an EIR be done relating to new and significant environmental facts such as the soil excavation recommended by Treadwell and Rollo.

Very truly yours,


RAYMOND N. BAKER


PATRICIA A. BAKER